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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,199	06/19/2001	Hiroshi Shingai	210039US2	9868
22850	7590	07/14/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ORTIZ CRIADO, JORGE L	
			ART UNIT	PAPER NUMBER
			2627	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/883,199

Applicant(s)

SHINGAI ET AL.

Examiner

Jorge L. Ortiz-Criado

Art Unit

2627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 0206 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


ANDREA WELLINGTON
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Hosaka teaches a film made of Ge, Sb and Te but fails to teach or suggest that the recording layer does not include silver (Ag).

The Examiner cannot concur with the Applicant because Hosaka teaches a recording layer made of Ge, Sb and Te, specifically $\text{Ge}_2\text{Sb}_2\text{Te}_5$, which does not include Ag.

Applicant argues that Hosaka fails to explicitly teach or suggest that the recording layer does not include silver (Ag).

The Examiner cannot concur with the Applicant because Hosaka explicitly teaches a recording layer of $\text{Ge}_2\text{Sb}_2\text{Te}_5$, which does not include Ag.

Applicant argues that Hosaka merely explains that uses a typical PC phase change GeSbTe and that one of ordinary skill in the art knows that a typical phase change film does not solely include the three elements, but that these elements are present without excluding other elements. Applicant provides two documents ((1)-U.S. Patent No. 4,670,345 and (2)-"Electrical properties of Ag-Doped $\text{Ge}_2\text{Sb}_2\text{Te}_5$ Films Used for Phase Change Random Access Memory") to show that $\text{Ge}_2\text{Sb}_2\text{Te}_5$ usually contains other elements. And because of those example documents Hosaka fails to literally describe that the recording layer does not include silver (Ag).

The Examiner cannot concur because Hosaka clearly specifies the kind of GeSbTe typical film being used, which is specified as $\text{Ge}_2\text{Sb}_2\text{Te}_5$, which as described does not include (Ag).

Furthermore, although $\text{Ge}_2\text{Sb}_2\text{Te}_5$ may further contain other materials; the two documents above do not show that silver is always present, contained or needed in $\text{Ge}_2\text{Sb}_2\text{Te}_5$ films.

Assuming arguendo that Hosaka recording layer may contain other elements, the claim contains the limitations using transitional term "including" which is synonymous of "comprising", which is inclusive or open-ended and does not exclude additional, unrecited elements.

Therefore, Hosaka will meet the claim because any other elements inherently included in the $\text{Ge}_2\text{Sb}_2\text{Te}_5$ film does not necessary has to be silver (Ag), hence the film will not include (Ag). Furthermore, document (2) above, is strictly directed to Ag-Doped $\text{Ge}_2\text{Sb}_2\text{Te}_5$, which is not what Hosaka is describing to be used, Hosaka specifically uses a recording layer of $\text{Ge}_2\text{Sb}_2\text{Te}_5$. Applicant is also admitting that $\text{Ge}_2\text{Sb}_2\text{Te}_5$ recording films may not include silver, as Applicant explains in his arguments with regard to the document (1) above.